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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,019	12/16/2003	Charles M. Mettler	PSSIP0115US	5594

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EXAMINER

SCHULTERBRANDT, KOFI A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/737,019

Applicant(s)

METTLER ET AL.

Examiner

Kofi A. Schulerbrandt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-20 and 22-34 is/are rejected.
- 7) ☒ Claim(s) 10 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>031804</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This first Office Action is in response to Applicant's originally filed Application received in the Office on December 16, 2003 in this case.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-13, 33 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 11-13, it is unclear whether the "anti-skid pad" is being positively claimed. In other words, it is unclear whether Applicant intends to claim the combination of the base and the anti-skid pad or merely the sub-combination of the base. No weight has been given to the pad. Claims 11-13 have been rejected below as best as can be understood.

Claim 33 recites the limitation "the base member intermediate end portions" in line 2. There is insufficient antecedent basis for this limitation in the claim. As a result, the scope of claim 33 is unclear. Claim 33 has been rejected below as best as can be understood.

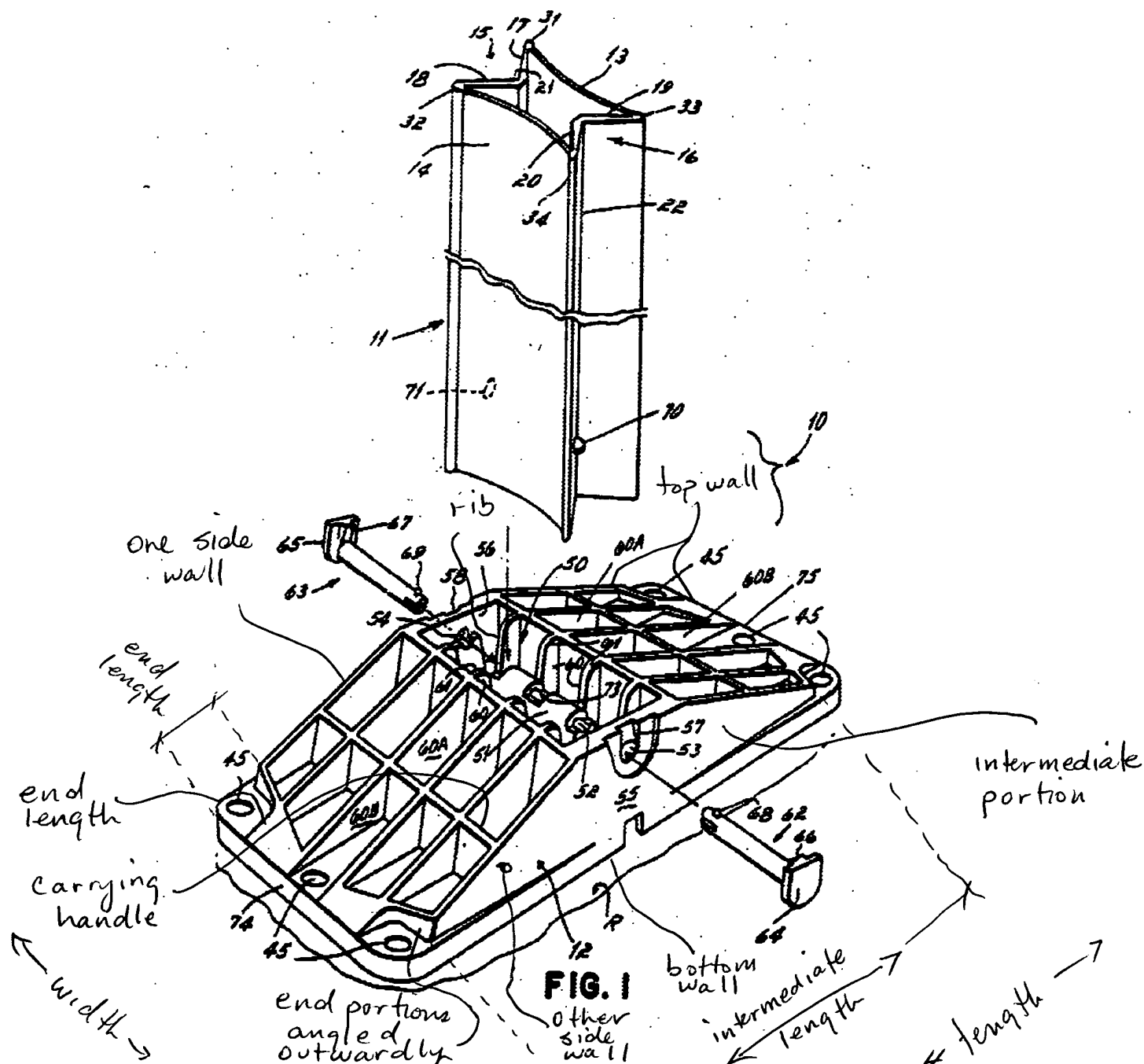
Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

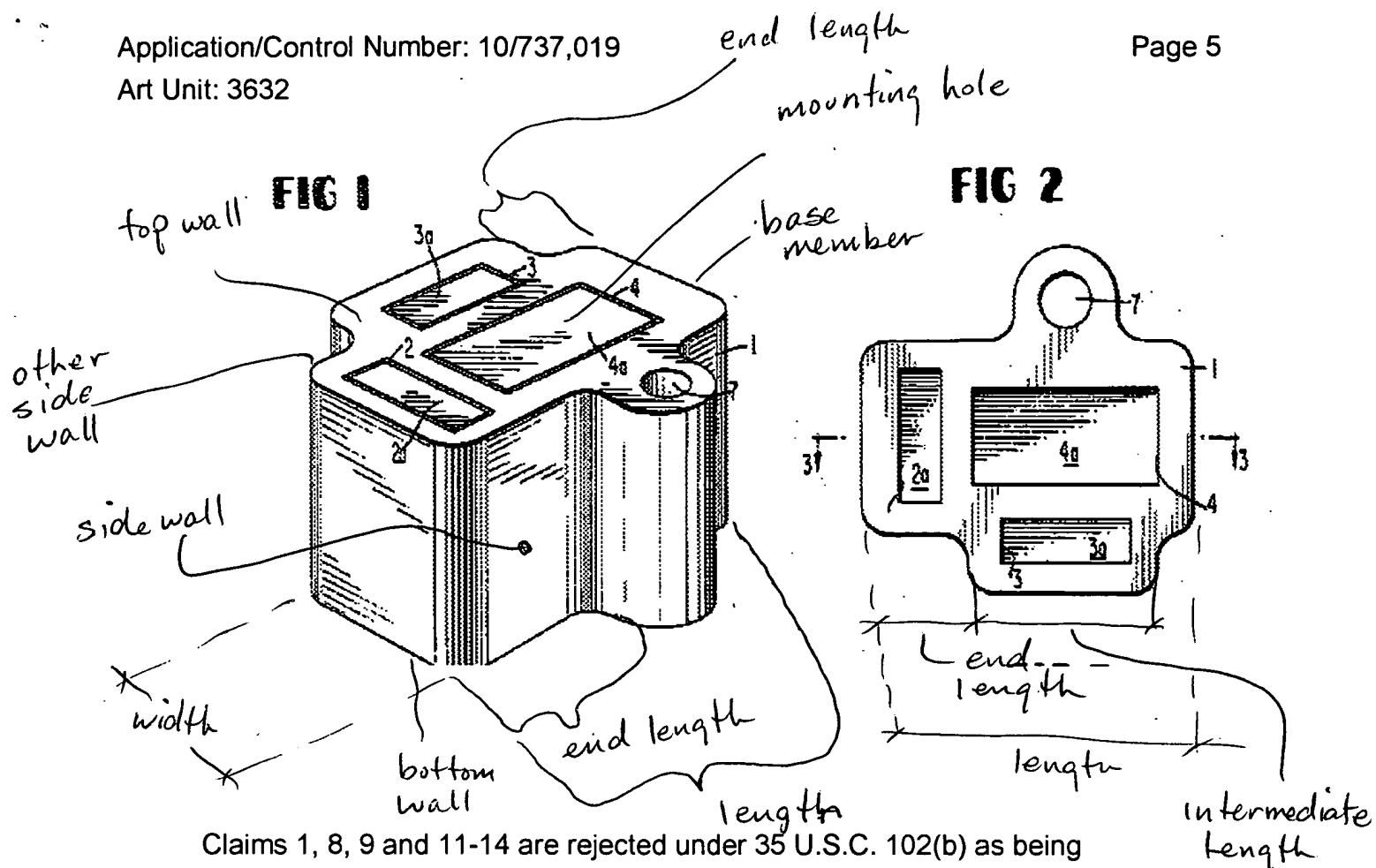
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-7, 16-20, 22-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Mariol et al. (4,596,489). Mariol et al. teach each feature of the claimed invention as shown below. Regarding claim 2, there is a horizontal plane that passes through the mounting hole center and through all the end lengths. Regarding claim 5, Mariol et. al. teach ribs rounded transversely relative to the elongated member. Regarding claim 6, Mariol et. al.'s ribs are axially rounded relative to the elongated pole. Regarding claim 16, the handle indicated below could be used as a handle for lifting the base. Regarding claim 18, the carrying handle extends axially with Schwab et. al.'s pins (62) and (63). Regarding claim 22, Mariol et. al. clearly teach plastic construction (See cross-sectional hatch Figure 2B).



Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by

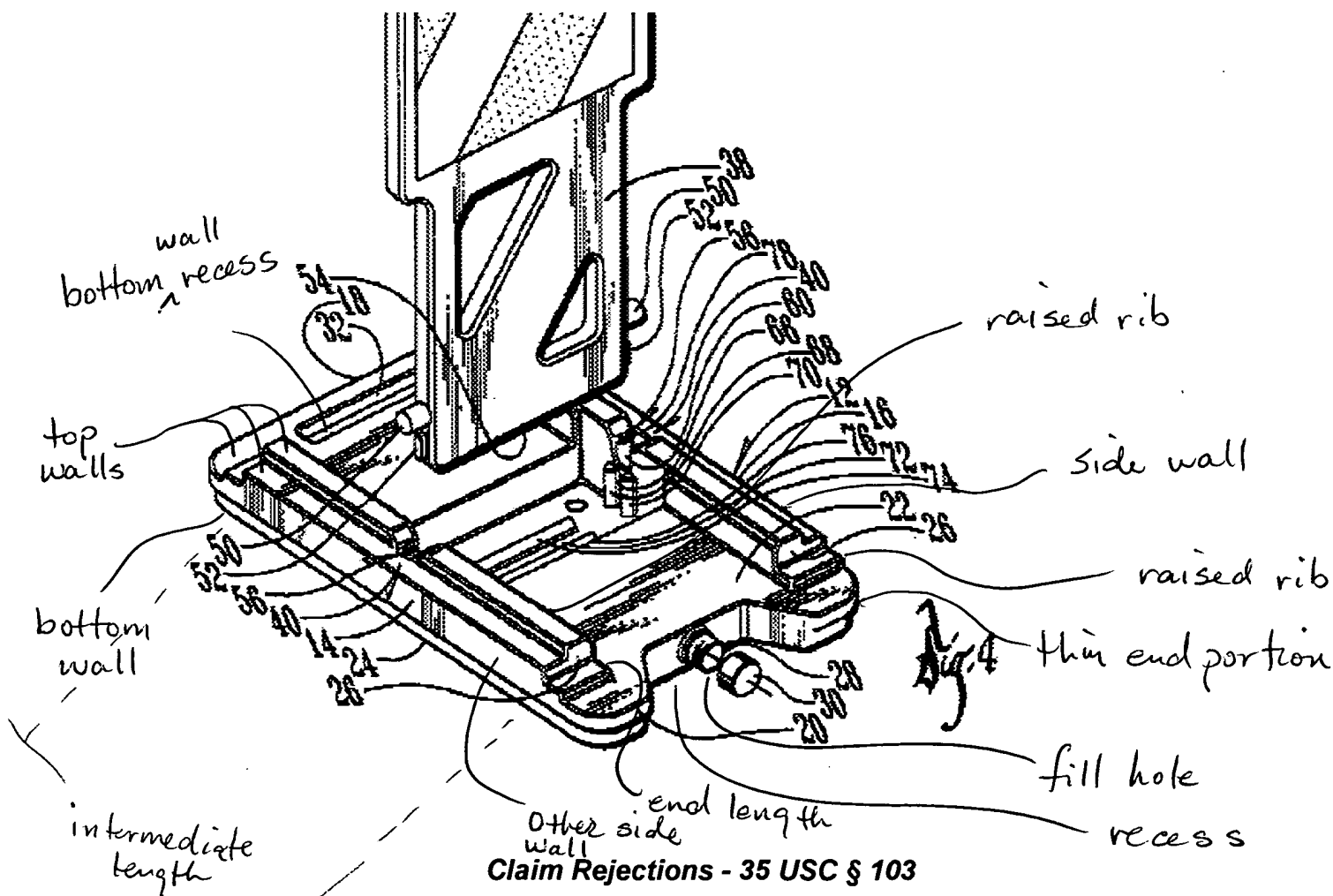
Stalzer (4,275,535). Stalzer teaches each feature of the claimed invention as shown below.



Claims 1, 8, 9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwab et al. (5,860,386). Schwab et al. teach each feature of the claimed invention as shown below. Regarding claim 1, a hole is "an area where something is missing" (Merriam-Webster Collegiate Dictionary, 10th ed. Merriam Webster Inc., Springfield Massachusetts. pg. 553). Therefore, Schwab et. al. clearly teach a hole where the vertical member is received. Regarding claim 9, Schwab et al.'s Figure 7 teach top walls of the base member having rounded surfaces that slope outwardly toward the bottom wall. Regarding claim 11, Schwab et. al.'s end portions are hollow and so the wall at the end is thin and the material from which the base is made is solid. Furthermore, the phrase "to facilitate attachment of anti-skid pads to the bottom wall at the end portions" does not add any structural limitation to the claim and is not positively claimed. No weight has been given to this phrase. Regarding claim 12,

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the phrase "to aid in locating the anti-skid pads on the bottom wall" does not add any structural limitation to the claim and is not positively claimed. No weight has been given to this phrase. Regarding claim 13, because the antiskid pads are not positively claimed, no weight has been given to the antiskid pads being stapled.



The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

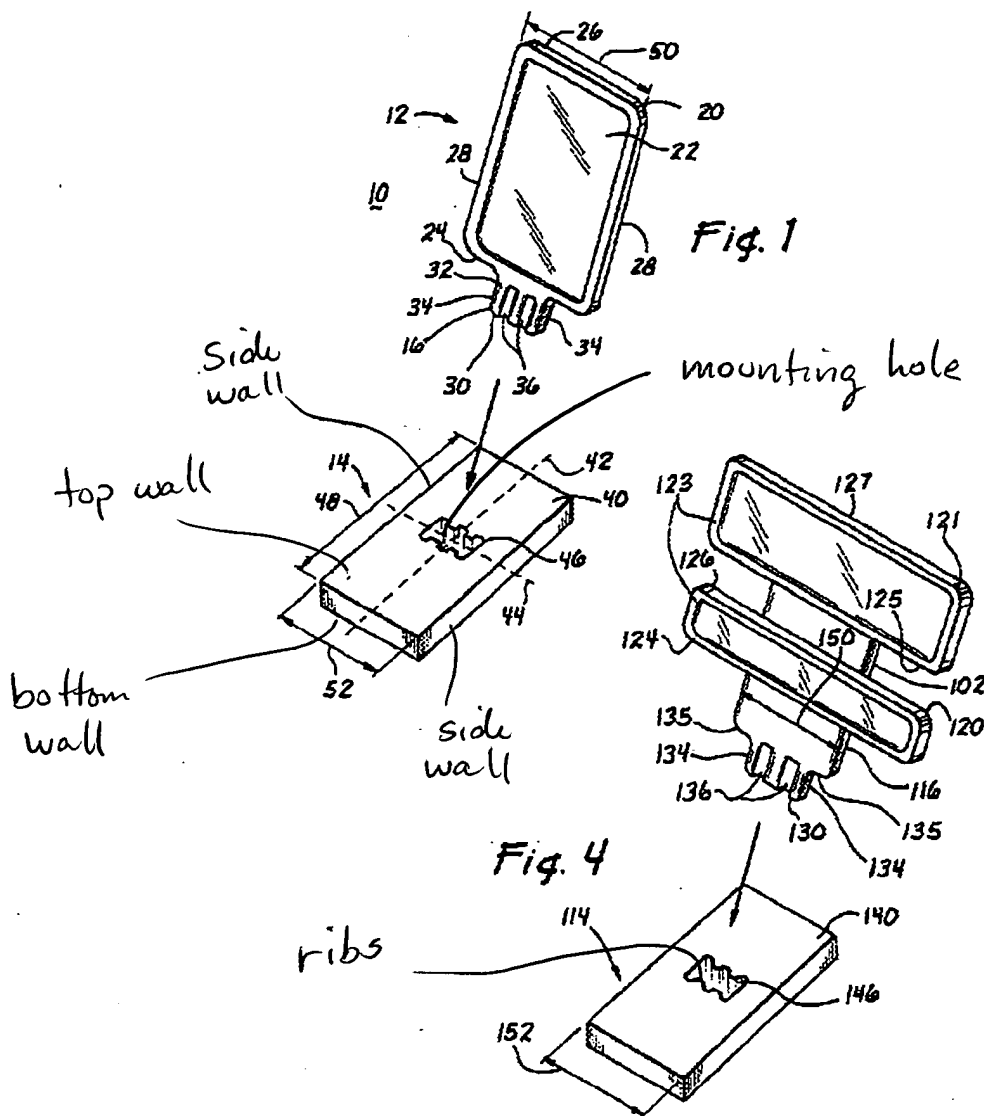
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwab et. al. (5,860,386). Schwab et. al. teach, substantially, each feature of the claimed invention as discussed above. Schwab et. al. teach raised portions (26) for stacking of bases (See col. 4, lns. 28-32) as well as other projections and recesses for facilitating stacking (See col. 4, lns. 54-57). Schwab et. al. does not specifically teach corresponding recess for the raised portions. It would have been obvious to one of ordinary skill in the art at the time of invention to have provided corresponding recesses as taught by Schwab et. al. (See col. 4, lns. 54-57) to receive the raised portions.

Claim 29-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulp et. al. (6,659,681), in view of Mariol et al. (4,596,489). Kulp et. al. teach, substantially, each feature of the claimed invention as shown below. Kulp et. al. teach ribs but do not specifically teach transversely rounded ribs with axially rounded end portions adjacent the top wall. Mariol et. al., however, teach ribs that are transversely rounded relative to the elongated member and have axially rounded end portions adjacent the top wall. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Kulp et. al.'s ribs to be transversely rounded as taught by Mariol et. al. in order to more easily and surely place the elongated member in the mounting hole.

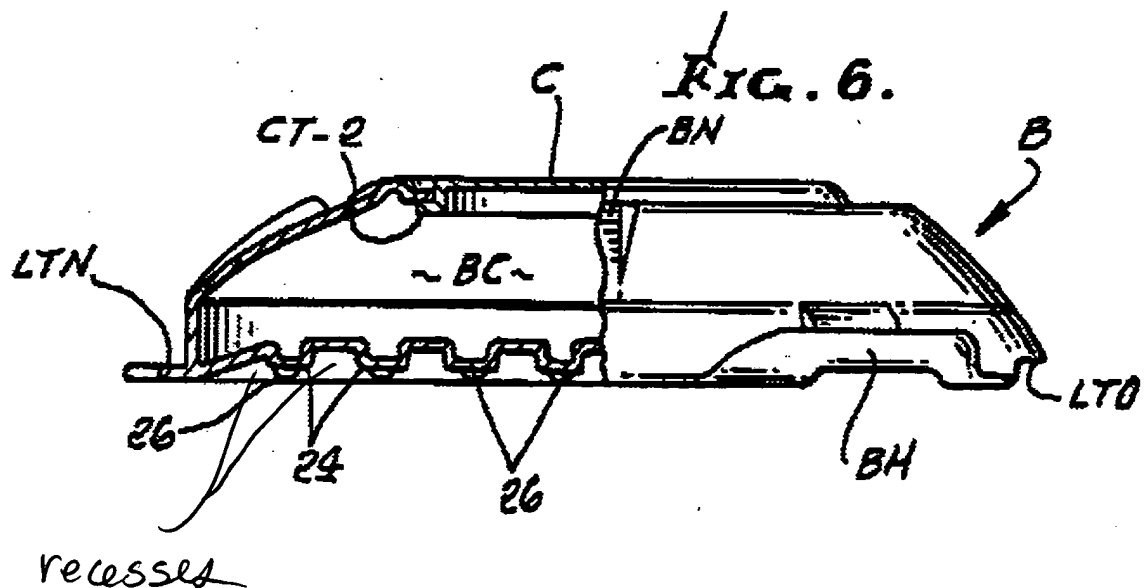


Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kulp et. al. (6,659,681), in view of Mariol et al. (4,596,489) and Schwab et al. (5,860,386). Kulp et. al. and Mariol et. al., in combination, teach substantially, each feature of the claimed invention as shown below. The combination of Kulp et. al. and Mariol et. al. teach a hollow member (See col. 5, Ins. 45-50), but do not teach a fill hole adjacent one end. Schwab et. al., however, teach the fill hole at one end. It would have been obvious to

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one of ordinary skill in the art at the time of invention to have modified Kulp et. al.'s base to have a hole at one end for filling as taught by Schwab et. al. in order to fill the base from the end.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kulp et. al. (6,659,681), in view of Mariol et al. (4,596,489) and Kulp et. al. (5,026,204). Kulp et. al. '681 and Mariol et. al., in combination, teach substantially, each feature of the claimed invention as shown below. The combination of Kulp et. al. '681 and Mariol et. al. teach a base member and end portions but do not teach being recessed at the end portions. Kulp et. al. '204, however, teach recessed end portions at the base as shown below. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Kulp et. al.'s base to be recessed in order to accept anti-skid pads in a straight line as taught by Kulp et. al. '204.



Prior Pertinent Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. '438 to Cross; '534 to Ryan; and '225 to Warner each teach weighted bases.

Allowable Subject Matter

Claims 10 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Indicating Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 10, the prior art of record does not teach, in combination with the other features of claim 8, a fill hole on an angled surface that slopes outwardly toward the bottom wall adjacent opposite ends of the base member. Regarding claim 21, the prior art of record does not teach, in combination with the other features of claim 18, a base support wherein the base member is substantially hollow and has a fill hole adjacent the end of the base member toward which the carrying handle extends.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is

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(703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kofi Schulterbrandt
November 23, 2004